



February 28, 2002

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2002-0969

Dear Ms. Silver:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159110.

The City of Dallas (the "city") received a request for twenty-one different categories of information regarding the termination of a specified employee. You state that you will release a portion of the requested information. You also state that you do not have information responsive to categories 15, 16, 17, 18, 19, and 20 of the request. We find that the Public Information Act does not require the city to disclose information responsive to categories 15, 16, 17, 18, 19, and 20 of the request because, according to the city, this information did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). Finally, you claim that the highlighted portions of Exhibit B and Exhibit C in its entirety are excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

First, you explain that the blue highlighted portions of Exhibit B consist of the city's five digit personnel identification number and that these numbers are used as the first five digits of a six digit account number at the City Employees Credit Union. You further assert that the release of these personnel identification numbers could give members of the general public access to credit union account records, and therefore, should be excepted under section 552.101 of the Government Code in conjunction with common law privacy. However, the Seventy-seventh Legislature recently added section 552.136 to chapter 552 of

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the Government Code. This newly enacted exception to public disclosure makes certain account number information confidential. Senate Bill 694 was passed on May 14, 2001, became effective when it was signed by the Governor on May 26, 2001, and provides in relevant part:

Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS.

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

We agree that the personnel identification numbers you have highlighted are confidential under section 552.136 of the Government Code for employees who are members of the city's credit union. Accordingly, the city must withhold the numbers you have highlighted in blue under section 552.136.

We note, however, that section 552.023 of the Government Code gives a person or a person's authorized representative a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person's privacy interest. Because section 552.023 provides the requestor a special right of access to his personnel identification number, the city must release to the requestor his personnel identification number.

Second, you assert Exhibit C is excepted from public disclosure because it contains a W-4 form. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Form W-4, the Employee's Withholding Allowance Certificate, is confidential as tax return information under title 26, section 6103(a) of the United States Code and must not be released. Open Records Decision No. 600 at 8-9 (1992).

Third, you assert that the green highlighted portions of Exhibit B are exempt from disclosure under section 552.101 of the Government Code in conjunction with section 1304(b) of title 8 of the United States Code. Section 1304(b) of the United States Code addresses the confidentiality of the registration of aliens under section 1301 of the United States Code and provides:

All registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only

(1) pursuant to section 1357(f)(2) of this title, and

(2) to such persons or agencies as may be designated by the Attorney General.

The information you have highlighted in green in Exhibit B consists of the employee's alien registration number. This number is made confidential under title 8, section 1304(b) of the United States Code and must not be released by the city.

Fourth, you assert that the yellow highlighted portions of Exhibit B are exempt from disclosure under section 552.117 of the Government Code. Section 552.117 excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires that the city withhold this information for a current or former employee or official who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). The city may not, however, withhold the information for a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Therefore, if the employee has elected to not allow public access to this information in accordance with the procedures of section 552.024 of the Government Code and prior to the city's receipt of the present request, we believe that the city must withhold this information from required public disclosure pursuant to section 552.117. You have submitted the applicable employee election form. The employee has elected to not allow public access to this information in accordance with the procedures of section 552.024 of the Government Code and prior to the city's receipt of the present request. Thus, the city must withhold the yellow highlighted information in Exhibit B pursuant to section 552.117 of the Government Code. We further note that the city must withhold boxes 1, 2, and 3 of the "tax status" field in the Payroll Change Authorization form.

Fifth, you assert that the red highlighted portions of Exhibit B are exempt from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part that “[i]nformation is excepted from the requirements of Section 552.021 if the information relates to: (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or] (2) a motor vehicle title or registration issued by an agency of this state[.]” Therefore, the city must withhold driver’s license and motor vehicle title or registration information highlighted in red pursuant to section 552.130 of the Government Code.

Finally, we note that Exhibit B includes an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Public Information Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude that Form I-9 is confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system.

To summarize: (1) the personnel identification numbers you have blue highlighted in Exhibit B are confidential under section 552.136 of the Government Code for employees who are members of the city’s credit union and the city must withhold these numbers under section 552.136; (2) Form W-4, the Employee’s Withholding Allowance Certificate, in Exhibit C is confidential as tax return information under title 26, section 6103(a) of the United States Code and must not be released; (3) the information you have highlighted in green in Exhibit B consists of the employee’s alien registration number which is made confidential under title 8, section 1304(b) of the United States Code and must not be released; (4) the city must withhold the yellow highlighted information in Exhibit B pursuant to section 552.117 of the Government Code; (5) the city must withhold the red highlighted driver’s license and motor vehicle title or registration information pursuant to section 552.130 of the Government Code; and (6) Form I-9, the Employment Eligibility Verification, in Exhibit B is confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

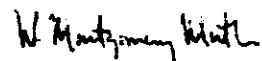
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 159110

Enc: Submitted documents

c: Mr. Steven J. Heath
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(w/o enclosures)